



Following an earlier preliminary hearing, the ALJ appointed Dr. Min to serve as claimant's authorized treating physician and granted claimant 4 weeks of temporary total disability benefits (TTD). That Order was issued on November 6, 2006, and was the subject of an appeal based solely on the issue of the number of weeks of TTD. The appeal was dismissed as the reviewing Board Member concluded there was no jurisdiction over that issue.

Since that time, *in spite of the ALJ's Order compelling respondent to provide treatment through Dr. Min*, respondent has admittedly refused to allow Dr. Min to continue to treat claimant.<sup>2</sup> As justification for its refusal, respondent appeared at the preliminary hearing and offered a report from another physician that suggests that claimant put forth less than adequate effort during a functional capacities evaluation. Respondent also offered a DVD which purported to show claimant violating the physician's restrictions during a period of surveillance that occurred before the earlier preliminary hearing. At no point during this hearing did respondent's counsel object to the court's jurisdiction, take issue with claimant's request for ongoing treatment or the claimant's statutory notice. Instead, respondent's sole position was that claimant did not require the treatment outlined by Dr. Min and for that reason, respondent was justified in refusing to authorize the treatment.

After considering this evidence, the ALJ elected to appoint Dr. Ellefson as the treating physician.<sup>3</sup> This was the physician suggested by claimant during the course of the hearing, although there was no indication that claimant was dissatisfied with Dr. Min or his treatment.

In its Application for Appeal the respondent asserted a "lack of jurisdiction" as its basis for appeal. Although the brief to the Board suggests a somewhat different approach. Respondent's brief indicates that claimant failed to file a Notice of Intent requesting a change of benefits as required by K.S.A. 44-534a. Rather, claimant filed a demand pursuant to K.S.A. 44-512a for the benefits awarded in the earlier preliminary hearing Order. And respondent maintains this sort of notice "was statutorily ineffective to vest subject matter jurisdiction in Judge Klein for the benefits sought at the January 10, 2007, hearing".<sup>4</sup>

The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact is subject to review. The Board can review allegations that an administrative law judge exceeded his or her jurisdiction.<sup>5</sup> The Board can also review the preliminary hearing issues listed in K.S.A. 44-534a(a)(2).

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<sup>2</sup> P.H. Trans. (Jan. 10, 2007) at 7. This conduct is curious given the provisions of K.S.A. 44-5,120(d)(13) and (19).

<sup>3</sup> ALJ Order (Jan. 26, 2007).

<sup>4</sup> Respondent's Brief at 1.

<sup>5</sup> K.S.A. 2006 Supp. 44-551.

Here, the only issue is whether the ALJ exceeded his jurisdiction in selecting an authorized treating physician. And that is not one of the jurisdictional issues listed in K.S.A. 44-534a(a)(2). And this Board Member does not find any evidence whatsoever that the ALJ exceeded his jurisdiction in appointing Dr. Ellefson as the treating physician.

K.S.A. 44-534a grants authority to an ALJ to decide issues concerning the furnishing of medical treatment, the payment of medical compensation and the payment of temporary disability compensation. The preliminary hearing statute found at K.S.A. 44-534a gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the ALJ did not exceed his jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary findings regarding medical treatment.

Respondent's arguments regarding the propriety of the ALJ entering an order without the proper statutory notice is without merit. This is an argument that respondent failed to make at the preliminary hearing. Arguments that are not presented to the ALJ will not be considered by the Board.

By statute, the above preliminary hearing findings and conclusions are neither final, nor binding as they may be modified upon full hearing of the claim.<sup>6</sup> Moreover, this review on a preliminary hearing Order may be determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the appeal of the Order of Administrative Law Judge Thomas Klein dated January 26, 2007, is dismissed and the Order remains in full effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April, 2007.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge

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<sup>6</sup> K.S.A. 44-534a.